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# THE LATERAN ACCORD

*by*

VERA A. MICHELES

*with the aid of the Research Staff of the Foreign Policy Association*

## INTRODUCTION

ON February 11, 1929 Church and State, the two parallels which, according to Giolitti's famous maxim, must never meet, found a point of contact in Italy when three important documents—a treaty of reconciliation, a concordat and a financial convention—were signed by the representatives of the Holy See and the Kingdom of Italy in the historic Hall of the Popes in the Lateran Palace. This event marked the settlement of the "Roman question," formerly considered to be as impossible of solution as the squaring of the circle.

According to Mussolini the "Roman question" had been "a thorn in the side of the nation" since 1870. Prior to that date the Pope was both head of an international organization devoted to spiritual ends, the Roman Catholic Church, and ruler of a small temporal State, the Papal States. The territorial possessions of the Holy See, which dated back to the eighth century, had been gradually enlarged until, in the nineteenth century, they included Romagna, the Marches, Umbria and the Patrimony of St. Peter, with Rome as the see of the Pope and the capital of the Papal States. These territories, however, were annexed one by one between 1860 and 1870 by the new Kingdom of Italy, which had been formed in 1861, with first Turin and then Florence as its capital. Finally, after a brief struggle, the Italian army occupied Rome on September 20, 1870, in defiance of the wishes of the Pope.

On May 13, 1871 the Italian Parliament passed the Law of Papal Guarantees. This law acknowledged the spiritual supremacy of the Pope and made provision for the unimpeded performance of his functions as head of a universal Church. It established a basis for relations between Church and State in Italy, with a view to carrying into effect Cavour's formula, "a free Church in a free State." Finally, it placed 3,225,000,000 lire (about $622,425,000) per annum at the disposal of the Holy See, as compensation for the territories of which it had been deprived. In 1872 Rome was proclaimed the capital of Italy.

On May 15, 1871 Pope Pius IX, in an encyclical addressed to Catholic bishops, repudiated the Law of Guarantees, a unilateral act of the Italian Government. He refused to recognize the Kingdom of Italy under the dynasty of the House of Savoy, left the annuity unclaimed, and declared himself to be "the prisoner of the Vatican." This negative policy was reaffirmed by his successors, Leo XIII, Pius X, Benedict XV and, until recently, Pius XI.

In this way was created the "Roman question," which is expressly and definitively eliminated by the treaty of reconciliation signed on February 11, 1929. The Holy See now recognizes the Kingdom of Italy under the dynasty of the House of Savoy, with Rome as its capital. Italy, for its part, recognizes the State of the City of the Vatican, constituted by the terms of the treaty. The territory of the new State is declared to be neutral and inviolable. The financial convention provides for payment by the Italian Government of 750,000,000 lire ($39,472,500) upon exchange of ratifications, and for the transfer at the same time of Italian five

*The bibliography of this report will be sent on request.*

per cent negotiable consolidated bonds to the nominal value of 1,000,000,000 lire ($52,630,000). The concordat regulates the relations between Church and State in Italy.

Rivers of ink, said Mussolini, have flowed regarding the "Roman question." Its solution, too, has brought forth innumerable comments, widely varying in their conclusions.[1]

The purpose of this report is to determine the scope of the Lateran accord, and to ascertain the effect which it may be expected to have on the international relations of the Holy See and Italy, and on the relations, within Italy, between Church and State. A study of the organization of the Roman Catholic Church, with special reference to the conduct of foreign affairs, is followed by a brief survey of the international position of the Holy See and of the main aspects of Papal diplomacy. The relations between the Holy See and Italy after 1870 are then examined, with emphasis on the Fascist Government's views concerning the Church, religion and religious instruction. The negotiations which preceeded the conclusion of the accord are analyzed in detail. The provisions of both treaty and concordat are summarized, and a comparison established between the Italian concordat and those recently concluded by other States. Finally, an attempt is made to ascertain the results of the accord from the point of view of both the Holy See and Italy.

## THE ROMAN CATHOLIC CHURCH

### ORGANIZATION

The Roman Catholic Church, an international organization devoted to spiritual ends, is governed in conformity with canon law—"the body of rules and regulations made or adopted by ecclesiastical authority for the government of the Christian organization and its members."[2] According to Catholic doctrine the ultimate source of canon law is God. In practice, the legislative power is exercised by the Pope, either alone or in conjunction with the episcopate[3] assembled in œcumenical, or general councils.

The Pope, in virtue of his position as Bishop of Rome, is the supreme governor of the Church, the vicar of Christ on earth.[4] His position as head of the Church is defined in the Vatican Constitution, *Pastor Aeternus*. He is elected by the College of Cardinals meeting in conclave. Generally speaking, any male Christian who has "reached the use of reason" may be elected Pope. In practice, since the sixteenth century, the office has always been held by an Italian, and frequently by a Roman. The present Pope, Pius XI, was born in Milan, and was elected on February 6, 1922 as successor to Benedict XV.

The Pope exercises what may be described as the ordinance power, by issuing bulls, decretals, encyclicals, letters, etc. on specific subjects. These documents, as well as the decrees of the Sacred Congregations, are published officially in the *Acta Apostolicae Sedis*,[5] and have the force of law. *Ex cathedra* pronouncements of the Pope made by him regarding "a doctrine touching faith or morals to be held by the Universal Church" are accorded the attribute of infallibility.[6]

1. Among the many articles which have been published on this subject, the following may be mentioned as of particular interest: "L'Ora di Dio," *Civiltà Cattolica*, Feb. 16, 1929, p. 293; Abbé X, "L'Accord entre l'Italie et le Vatican," *La Revue des Vivants*, Mar., 1929, p. 481; Géraud, André ("Pertinax"), "The Lateran Treaties: A Step in Vatican Policy," *Foreign Affairs*, July, 1929, p. 571; Hayes, Carlton J. H., "Italy and the Vatican Agreement," *The Commonweal*, Mar. 27 and Apr. 3, 1929; Claar, Maximilian, "Die Lösung der Romanischen Frage nach den Lateranverträgen," *Europäische Gespräche*, Mar., 1929, p. 105; Coppola, Francesco, "La Croce e l'Aquila," *Politica*, Feb.-Apr., 1929, p. 35; Korovin, E., "Vatikan kak Faktor Sovremennoi Mezhdunarodnoi Politiki" (The Vatican as a Factor in Contemporary International Politics), *Mezhdunarodnaya Zhizn* (International Life), Feb., 1929, p. 44; Pernot, Maurice, a series of articles in *Journal des Débats*, Feb.-June, 1929; Volpe, Giocchino, "Il Patto di S. Giovanni in Laterano," *Gerarchia*, Feb., 1929, p. 92. P. Gentizon, the Rome correspondent of *Le Temps* (Paris), gave an able analysis of the Lateran accord in a series of interesting dispatches. The Italian press was uniformly more laudatory than analytical.

2. *Catholic Encyclopedia*, New York, Appleton, 1907-1922 (15 vols.), Vol. IX, p. 56. At the present time canon law is embodied in a code, *Codex Juris Canonici*, work on which was begun in 1904; it was completed in 1917 and came into force on May 19, 1918. Cf. bull of Benedict XV, May 27, 1917, *Providentissima Mater Ecclesia*.

3. The ecclesiastical organization of the Church comprises 14 Patriarchates, 8 of the Latin Rite and 6 of the Oriental Rite; 240 Archbishoprics; 898 Bishoprics, 33 Abbacies and Prelatures *Nullius Dioceseos;* 210 Vicariates Apostolic; 73 Prefectures Apostolic; 10 Apostolic Administrations and 20 Missions. There are at present 734 Titular Sees, archiepiscopal and episcopal, the former being occupied principally by Nuncios, Internuncios and Apostolic Delegates, the latter by Vicars Apostolic and by Bishops Coadjutors and Auxiliary.

4. Cf. *Annuario Pontificio, 1929*, Rome, Tipografia Poliglotta Vaticana, 1929; Ayrhinac, H. A., *Constitution of the Church in the New Code of Canon Law*, New York, Benziger, 1925; *Catholic Encyclopedia*, cited; "The Holy See," *Europa, 1929*, London, Europa Publications, Ltd., 1929, p. 66.

5. Prior to 1909 this official gazette of the Holy See was entitled *Acta Sanctae Sedis;* it is published by the Tipografia Poliglotta Vaticana in Rome.

6. Vatican Constitution, *Pastor Aeternus* (The Eternal Shepherd), promulgated at the Vatican Council, July 18, 1870.

Œcumenical councils are summoned by the Pope from time to time.[7] The bishops who attend it vote individually, not by "nations." The findings of the councils are binding on the Church only when promulgated by the Pope in the form of decrees—*Acta Conciliorum*. Decrees dealing with dogma, faith and morals are also accorded the attribute of infallibility.

The cardinals are appointed by the Pope, the appointments being announced in secret consistory.[8] According to the demands of the reform councils (Constance, 1414-1418 and Basle, 1431-1433) and the decrees of the Council of Trent (1545-1563), there should be representatives of all Christian nations in the College of Cardinals. The total number of cardinals was fixed at 70 in 1586. At present, out of 63 cardinals 34 are Italians, the rest being distributed as follows: France 6; Spain 5; the United States of America 4;[9] Germany 4; the British Empire 2 (England 1, Canada 1); Austria 2; Poland 2; Brazil, Portugal, Holland, Hungary and Czechoslovakia one each.

The cardinals are divided into three orders which have no hierarchical significance: (a) 6 cardinal bishops; (b) 50 cardinal priests, usually archbishops; and (c) 9 cardinal deacons, usually priests. Every cardinal is a member of the Roman clergy—either a bishop of a suburban diocese, a priest of a parish in Rome or a deacon of the Roman diocese. The cardinals form a corporation, the College of Cardinals, of which the first cardinal bishop is Dean. The present incumbent of this office is Cardinal Vincenzo Vanutelli, Bishop of Palestrina and of Ostia.

Cardinals are expected to live in Rome. Non-Italian cardinals, however, with few exceptions, reside in their dioceses. The cardinals residing in Rome are known as cardinals *in Curia* (at court). They are engaged in various administrative functions. The fact that foreign cardinals are not required to live in Rome results in a large preponderance of Italians in the administration of the Church. Out of thirty-three cardinals in the Roman Curia, twenty-eight are Italian and six non-Italian.

In the performance of his functions as head of the Church, the Pope is assisted by a number of departments or ministries known collectively as the Roman Curia. These departments fall into three main groups: (1) the Sacred Roman Congregations; (2) the Tribunals;[10] (3) the Offices of the Curia. The work of the tribunals, which is largely concerned with matters of ecclesiastical discipline, falls outside the scope of this study.

### ECCLESIASTICAL ADMINISTRATION

The affairs of the Church, in their ecclesiastical aspect, are administered by twelve Sacred Congregations. Each of the congregations is headed either by the Pope as prefect, or by a cardinal prefect appointed by him. The prefect is assisted by a secretary or assessor; together they form the *Congresso*—a committtee for the adjustment of less important matters. In each congregation there are two groups of officials: (1) cardinals, selected by the Pope and named by a letter of the cardinal Secretary of State; (2) minor officers, chosen on the basis of competitive examinations and named by a letter of the cardinal prefect. In each congregation the decisions emanate from the cardinals.

Of the several congregations, four are of importance from the point of view of international relations:

(1) *The Sacred Congregation of Propaganda* (*De Propaganda Fide*). It is entrusted with the regulation of ecclesiastical affairs in "missionary countries"—countries that have as yet no regular hierarchy—viz., Africa, Albania, Australasia, China, the East Indies,[11] Greece, Indo-China and Japan (including Korea and Formosa). The congregation determines the ecclesiastical rank of each mission (prefecture, vicariate, or diocese), assigning to it a superior according

7. Twenty œcumenical councils have been held in the history of the Church, the last one being the Vatican Council of 1870, suspended as a result of the occupation of Rome by the Italian army. It is reported that a council may be summoned for 1930 or 1931.

8. Assembly of cardinals at the Papal Court.

9. Cardinal Dougherty, Archbishop of Philadelphia; Cardinal Hayes, Archbishop of New York; Cardinal Mundelein, Archbishop of Chicago; and Cardinal O'Connell, Archbishop of Boston.

10. There are three tribunals; the Apostolic Penitentiary, the Supreme Tribunal of the Segnatura and the Sacred Roman Rota.

11. The Apostolic Delegation to the East Indies, in so far as the dioceses under Portuguese patronage are concerned, is under the jurisdiction of the Sacred Congregation for Extraordinary Ecclesiastical Affairs. (Cf. p. 160.)

to its rank. It also undertakes the duty of supplying missionaries wherever their services are needed and supervises institutions for the training of Catholic missionaries.

(2) *The Sacred Consistorial Congregation.* This congregation has jurisdiction over ecclesiastical affairs in countries not subject to the Congregation of Propaganda. These include European countries, Canada and Newfoundland, Cuba and Porto Rico, Mexico and the United States. The Pope acts as prefect for this congregation. The cardinal Secretary of State is an *ex officio* member, and the Secretary of the Congregation of Extraordinary Ecclesiastical Affairs acts as one of the counsellors.

(3) *The Sacred Congregation for the Oriental Church (Per la Chiesa Orientale)*, established on December 1, 1917, has jurisdiction over Egypt, Arabia, Eritrea and Abyssinia; Mesopotamia, Kurdistan and Asia Minor; Constantinople; Persia and Syria.[12] This congregation has the Pope for prefect. It has charge of affairs of whatever kind that pertain to persons, discipline or rites of the Oriental Church, even those of a mixed nature which affect a Latin by reason of the matter or the person involved.

In countries under the jurisdiction of each one of these three congregations the Holy See is represented by Apostolic Delegates,[13] who do not enter into communication with the civil authorities but merely report on the affairs of the Church within their respective territories. Each Apostolic Delegate is assisted by an auditor.[14]

(4) *The Sacred Congregation of Extraordinary Ecclesiastical Affairs.* This congregation has the cardinal Secretary of State for prefect. It examines matters submitted to it by the Pope, most important of which are the negotiation and conclusion of concordats.

Concordats are "agreements between the Holy See and the governments of states, the inhabitants of which are either wholly or in part Catholic, not on questions of faith or dogma but on matters of ecclesiastical discipline, such as the organization of the clergy, the boundaries of the dioceses, the nominations of bishops and parish priests."[15] Concordats are concluded with civil governments, not with ecclesiastical authorities, and non-Catholic governments may be parties to them.

A concordat is negotiated, concluded and ratified in a manner similar to that employed for international agreements.[16] Jurists, however, differ as to the nature of a concordat. Viewed as a concession of certain privileges by the State to the Church it may be regarded as constitutional law; viewed as a concession by the Church to the secular State, it may be regarded as an exception to the general rules of canon law. The subject matter of the concordat lies within the sphere of both constitutional and canon law, but generally not within that of international law. While, then, a concordat is similar to an international agreement in form, it is regarded by the majority of text-writers as a public act of the State which enters into it.[17]

There is no consensus of opinion as to the method in which a concordat may be terminated. Both Church and State have held at various times that it could be abrogated by unilateral action. The French concordat of 1801 was abrogated (outside of Alsace-Lorraine) by the law of 1905 on the separation of Church and State, without prior consultation with the Holy See; several other con-

12. A special commission on Russia was established in 1926.

13. The Holy See is represented by Nuncios in those countries under the Sacred Consistorial Congregation with which it has diplomatic relations.

14. Mgr. Pietro Fumasoni-Biondi has been Apostolic Delegate to the United States since 1922, with headquarters in Washington; the auditor is Mgr. Paolo Marella.

15. Higgins, A. Pearce, "The Papacy in International Law," *Studies in International Law and Relations*, Cambridge, University Press, 1928, p. 52. Cf. also Bierbaum, Max, *Das Konkordat in Kultur, Politik und Recht*, Freiburg, Herder, 1928; Giannini, Amedeo, *I Concordati Postbellici*, Milan, Società Editrice "Vita e Pensiero," 1929, which contains the texts of concordats concluded after 1919. Concordats concluded prior to that date may be found in *Raccolta di Concordati su Materie Ecclesiastiche tra la Santa Sede e le Autorità Civili*, Rome, Tipografia Poliglotta Vaticana, 1919, and the *Acta Sanctae Sedis Acta Apostolicae Sedis* cited above. At the present time the Holy See has concordats with the following States: Austria, Aug. 18, 1855; Bavaria, Mar. 29, 1924 (replacing concordat signed June 5, 1817); Belgium, partial concordats, May 21, 1776 and May 26, 1906; Colombia, Dec. 31, 1887 and July 20, 1892; Costa Rica, Oct. 7, 1852; Guatemala, Oct. 7 and June 2, 1884; Honduras, July 9, 1861; Haiti, Mar. 28, 1860; Italy, Feb. 11, 1929; Latvia, May 30, 1922; Lithuania, Sept. 27, 1927; Nicaragua, Nov. 2, 1861; Poland, Feb. 10, 1925; Prussia, June 14, 1929; Rumania, 1929; Salvador, Apr. 22, 1862; Spain, Apr. 27, 1845, Mar. 16, 1857, Aug. 25, 1859, July 12, 1904; Venezuela, July 26, 1862. On Feb. 2, 1928, by an exchange of notes, the Holy See concluded a *modus vivendi* with Czechoslovakia. The French concordat of 1801 is still in force in Alsace-Lorraine. Negotiations looking toward the conclusion of a concordat are now in progress with Germany.

16. The Lithuanian concordat was registered with the League of Nations on June 16, 1923. League of Nations, *Treaty Series*, Vol. XVII (1923), p. 366.

17. Fauchille, Paul. *Traité de Droit International Public.* Paris, Rousseau, 1922-1926, 2 vols., Vol. I, p. 439-446; Bierbaum, *op. cit.*

cordats have been considered invalid on the ground that they were found to conflict with subsequent legislation. The Holy See now appears to be of the opinion that a concordat, a bilateral agreement, is binding on both parties, and cannot be terminated unilaterally.[18] Several concordats, among them those with Bavaria (1924) and Italy (1929), provide that, should any difficulty arise in the future with regard to their interpretation, the contracting parties shall "proceed together to an amicable solution." The procedure to be followed in such an eventuality is not defined; it may be doubted, however, that it would go farther than mutual representations through ordinary diplomatic channels.

The majority of text-writers agree that the clause *rebus sic stantibus*, according to which international agreements may lapse as a result of a fundamental change in circumstances, applies with particular force to concordats. It is claimed that relations established with a government tolerant of, if not friendly to, the Catholic Church, might appear intolerable to the Holy See when that government is replaced by one holding anticlerical or atheistic views.

### ADMINISTRATION OF FOREIGN AFFAIRS

The administration of the affairs of the Church in their political aspect is entrusted to the Secretariate of State, one of the five offices of the Curia, which is headed by the cardinal Secretary of State (an office at present held by Cardinal Pietro Gasparri). It is divided into three sections:

(1) The Section on Extraordinary Affairs, whose work is closely connected with that of the Sacred Congregation of Extraordinary Ecclesiastical Affairs. Mgr. Francesco Borgongini Duca was, until recently, secretary of both these bodies.

(2) The Section on Ordinary Affairs, which regulates the relations of the Holy See with secular States, whether through Apostolic Legates, Nuncios and Internuncios or through Ambassadors accredited to the Holy See.

(3) The section on Apostolic Briefs to Princes, which is administered by a chancellor.

18. Cf. Encyclical of Pius X, Feb. 11, 1906, *Vehementer*.

The Apostolic Legates are usually cardinals charged by the Holy See with some particularly solemn or important political mission. Nuncios and Internuncios are accredited to governments with which the Holy See maintains diplomatic relations and fulfill two functions: they foster friendly relations between the Holy See and the governments to which they are accredited, and they report to the Pope on the affairs of the Church within their respective territories. In the performance of their duties they enjoy the same privileges and immunities as those which are accorded to the diplomatic representatives of secular States. Conversely, it would appear that they are similarly precluded from committing acts outside the sphere of their duties, such as interference in the internal affairs of States.[19] In accordance with the rules adopted at the Congress of Vienna in 1815, a Nuncio or Internuncio acts as dean of the diplomatic corps.

At the present time the Holy See is represented by Nuncios or Internuncios in the following States: Argentina, Austria, Bavaria, Belgium, Bolivia, Brazil, Chile, Colombia, Czechoslovakia, Central America (Costa Rica, Honduras, Nicaragua, Panama and Salvador), France, Germany, Hungary, Jugoslavia, Latvia, Liberia, Lithuania, Luxemburg, the Netherlands, Peru, Poland, Portugal, Prussia, Rumania, Spain, Switzerland and Venezuela.[20] It will be noted that the Holy See maintains diplomatic relations with a number of States with which it has no concordats.

Of the States which receive Papal agents only Honduras, Luxemburg, the Netherlands, Panama, Paraguay and Switzerland are not represented at the Vatican. Great Britain, Monaco and San Marino receive no Papal agents, but send envoys to the Vatican. During the period 1848-1868 the United

19. In 1894 the French Minister of Foreign Affairs held that Mgr. Ferrata, Papal Nuncio in Paris, had exceeded his powers by addressing himself directly to the members of the French episcopate with regard to legislation which had been passed by the Chamber of Deputies; in 1895 the President of the Council of Ministers of Hungary stated that Mgr. Agliardi, Papal Nuncio in Vienna, had exceeded his powers by making public addresses in which he had criticized the policy of the government in the matter of civil marriage.

20. On June 7 Mgr. Borgongini Duca was appointed Nuncio to Italy, and on June 8 Senator de Vecchi was appointed Italian Ambassador to the Vatican. The Holy See expects to send a Nuncio to the Irish Free State, which has named Mr. Charles Bewley to represent it at the Vatican. *New York Times*, May 26 and June 9, 1929.

States was represented by a Minister at the Vatican. His functions, however, were "the cultivation of the most friendly civil relations with the Papal Government," and "the extension of the commerce between the two countries." He was instructed to "avoid even the appearance of interfering in ecclesiastical questions, whether these relate to the United States or to any other portion of the world."[21] After 1868 the representation of the United States at the Vatican was discontinued. The Department of State recently declared that the question of American representation at the Vatican had not arisen.

## THE INTERNATIONAL POSITION OF THE HOLY SEE

The term "Holy See" has always been used to describe the central organization of the Roman Catholic Church, "a moral person by divine right."[22] Prior to 1870 the spiritual influence of the Pope far surpassed his temporal power. Secular States treated the Holy See with a deference seldom accorded to a State territorially insignificant. *De facto,* if not *de jure,* the Pope's real power derived from his position as head of a universal Church.

The Law of Guarantees acknowledged the spiritual supremacy of the Pope, but made no reference to the temporal power of which he had been deprived. It provided for the unimpeded performance of the Pope's spiritual mission. The relations of the Pope with secular States, Italy excepted, remained essentially unchanged.

The loss of territory undergone by the Holy See, however, raised the question of its status in international law. Could it still be juridically defined as a State, subject to the rights and obligations prescribed by international law? If not, what was its exact position in the international community?

The majority of text-writers agreed that, after 1870, the Holy See could no longer be classified as a State, regardless of the fact that it exercised the right of legation and entered into agreements with secular States. They differed, however, as to the proper juridical definition of the Holy See, some claiming that the Pope could be regarded as a "natural" person in international law, and others that the Papacy, viewed as an institution, had the characteristics of an "artificial" international person.[23] The truth of the matter was that the Holy See defied classification, and was adequately described by Geffcken as "a unique phenomenon in history."

The question of whether, after 1870, the Holy See was in a position to participate in international conferences was answered by secular States in the negative, largely owing to the influence of Italy. In 1899 the Holy See was denied representation at the Hague Conference. It was barred from the Peace Conference in 1919, and has taken no direct part in the work of the League of Nations. Nevertheless, the Popes as individuals have not remained indifferent to international controversies: in 1885 Leo XIII acted as mediator between Germany and Spain in the affair of the Caroline Islands; in 1909-1910 Pius X arbitrated boundary disputes between Brazil and Peru, and between Brazil and Bolivia; during the World War Benedict XV issued appeals for peace on several occasions, and in 1917 he offered to act as mediator between the belligerents.[24]

### INTERNATIONAL GUARANTEES

No attempt was made by secular States in 1870 to offer to the Holy See the protection it desired or, subsequently, to guarantee its international position. The Italian Government would have viewed the offer of international guarantees and their acceptance by the Holy See as intolerable. On June 28, 1915 the Holy See dispelled all fears of an appeal to international intervention by declaring, through Cardinal Gasparri, that it

21. Mr. Buchanan, Secretary of State, to Mr. Martin, Apr. 5, 1848. Moore, *International Law Digest,* Vol. I, p. 130.

22. Brown, B. F., *The Canonical Juristic Personality with Special Reference to Its Status in the United States of America,* Washington, The Catholic University of America, 1927, p. 24.

23. Fauchille, *op. cit.,* Part I, p. 747 ff.; Higgins, *op. cit.*

24. For a detailed discussion of this subject cf. Brière, Yves de la, *L'Organisation Internationale du Monde Contemporain et la Papauté Souveraine,* Paris, Editions Spès, 1924; Pernot, Maurice, *Le Saint-Siège, l'Eglise Catholique et la Politique Mondiale,* Paris, Armand Colin, 1924. On December 19, 1928, Pius XI addressed identical telegrams to the governments of Bolivia and Paraguay, exhorting them to adopt peaceful methods for the settlement of their boundary dispute. Cf. *L'Europe Nouvelle,* Mar. 23, 1929, p. 390.

looked for the systematization of its position in Italy not to foreign arms, but to the sense of justice of the Italian people. In June 1919, during the Peace Conference, conversations were arranged in Paris between Mgr. Cerretti, representing the Holy See, and M. Orlando, the Italian Prime Minister, through the mediation of Mgr. Kelley, an American prelate. The bases of an agreement were laid down: a measure of temporal power was to be restored to the Holy See; its international position was to be guaranteed by Italy and other States through the agency of the League of Nations, which was then being formed. These negotiations, however, were abandoned with the resignation of M. Orlando on June 19.[25]

It may be seen from the above analysis that the Roman Catholic Church, even when bereft of temporal power, continued to function freely as an international organization devoted to spiritual ends, and, in addition, maintained political relations with a number of secular States. The guiding motive of Papal diplomacy has been the preservation and promotion of the interests of the Church by all means at the disposal of the Holy See. For this purpose, amicable relations have been established with religiously "neutral" and even with anticlerical governments whenever it has been found that the interests of the Church could be thereby advanced. As a result of the situation created by the "Roman question," however, Italy, a stronghold of Catholicism, remained outside the orbit of Papal diplomacy.

The absence of official relations between the Holy See and Italy was disadvantageous for both in the field of international affairs.[26] The Holy See could no longer hope to alter the position in which it had been placed as a result of the events of 1870; this position, however, it was anxious to regularize by a bilateral act, in contrast to the unilateral Law of Guarantees. A treaty with Italy was expected not only to convert a *de facto* situation into a *de jure* one, but also to put an end to the prevailing uncertainty regarding the international status of the Holy See. Italy, for her part, stood to gain by reconciliation with the Holy See, "the mightiest Catholic organization in the world." Her prestige in Catholic States might thereby be increased, and she might acquire a degree of influence in the affairs of the Church. A detailed examination of the treaty of reconciliation can alone reveal whether both parties obtained the advantages they sought to secure in the international sphere by the settlement of the "Roman question." Before passing to the terms of the treaty, however, it is necessary briefly to review the relations of Church and State in Italy between 1870 and 1929.

## THE HOLY SEE AND ITALY

### THE LAW OF GUARANTEES

The Law of Guarantees in 1870 attempted to create "a free Church in a free State." It provided for the regulation of relations between Church and State in such matters as the nomination of bishops, appointments to benefices, and the publication and execution of the acts of ecclesiastical authorities. By subsequent legislation the Italian Government made civil marriage obligatory, abolished religious ceremonial in the administration of oaths, and conferred upon the family the right of election in the matter of religious instruction for children in the elementary schools.

These and other acts of the Italian Government were viewed by the Church as an infringement upon its rights and privileges; they were officially criticized and denounced by the Holy See. Thus the legal position of the Church in Italy remained anomalous. In practice, however, save for occasional clashes, its relations with the State became gradually less bitter. The Italian clergy adapted themselves to the *fait accompli*, and found many points of contact with Catholic Liberals. Finally, the *non expedit*, by which the Church had advised Catholics in 1867 to abstain from political activities, was permitted in 1919 to lapse; Catholics were again free to exercise their rights and duties as

25. Mussolini, Benito, Address before the Chamber of Deputies, May 13, 1929, *Corriere della Sera*, May 14, 1929; Orlando, Vittorio E., "The First Agreement between Italy and the Holy See," *The Saturday Evening Post*, May 4, 1929.

26. For a discussion of the "Roman question" as viewed by Church and State within Italy cf. *The Holy See and Italy*, p. 165.

citizens by taking part in the elections and running for political offices. In that same year a political party with a democratic program "inspired by Christian ethics" was formed by a priest, Don Luigi Sturzo, under the name of the Popular party.[27]

### FASCISM AND THE CHURCH

The advent to power in 1922 of the Fascist party, largely composed of former Socialists and Liberals, appeared to presage an active anticlerical policy in Italy. The Fascist Government, however, promised its protection to the Church and the Catholic religion; the Church, for its part, viewed with favor the new government's efforts to put an end to civil strife. When the Popular party, which had at first co-operated with the Fascists, decided to abandon the government, Mussolini received the assistance of the Church in suppressing the party, and in the elections of 1924 the clergy were enjoined by the Church to maintain strict neutrality.[28] Rumors of a reconciliation between Church and State filled the Italian press in 1921, and again in 1926, when the "Roman question" was reviewed by the *Popolo d'Italia*[29] and the *Osservatore Romano*.[30]

The Fascist conception of the State does not appear to provide a basis for the coexistence of Church and State. The State, viewed either as a biological unit of which the individual is an integral part,[31] or as an ethical entity (*stato etico*) embracing all human manifestations, economic, political, spiritual and intellectual,[32] is conceived by Fascists as an all-inclusive organization established for the benefit, not of individuals, singly or in groups, but for its own ends which, presumably, are prescribed by laws. The all-inclusive State offers an obvious contrast to a universal Church. This contrast did not escape Fascist political theorists. Gentile, for example, has expressed the opinion that the Fascist State and the universal Church are incompatible: the one excludes the other.[33]

Fascist theorists, however, distinguish between the Roman Catholic Church as an organization and the Catholic religion as the national, historical faith of the Italian people. The universality and disciplinary nature of the Catholic religion eminently fit it, in their opinion, to impart to Fascist citizens the religious (or sacred) conception (or sense) of life—one of the essential elements in the moral make-up of the individual.[34] The Fascist State has undertaken to give "material and moral greatness to the Italian people";[35] as a result, the government takes a profound interest in the religious education of the citizens. In effect, Gentile and his followers vigorously oppose the "neutral" school, in which the morale of the children is undermined by agnosticism and scepticism.[36]

To avoid this danger, the crucifix was restored to the schools by the Fascist Government, side by side with the portrait of the King—"the two symbols sacred to faith and to national sentiment."[37] The royal decree of October 1, 1923 carried into effect a reform proposed by Gentile: the teaching of the Catholic religion was made obligatory in elementary schools. Article 3 of this decree reads as follows:

> "The teaching of the Christian doctrine in accordance with the Catholic faith shall form the basis and aim of elementary education in all its grades.
>
> "Religious instruction shall be given on the days and hours established in accordance with the regulation, by such of the teachers in the schools as are deemed competent for this task or by other persons recommended by the school council and approved by the royal educational

27. Sturzo, Luigi, *Italy and Fascismo*, London, Faber and Gwyer, 1926, p. 19. For an excellent analysis of the period 1870-1915, cf. Croce, Benedetto, *La Storia d'Italia dal 1879 al 1915*, Bari, Laterza, 1928.

28. Schneider, H. W., *Making the Fascist State*, New York, Oxford University Press, 1928, p. 218-219; Sturzo, *op. cit.*

29. Mussolini's brother, Arnaldo Mussolini, is the editor of this paper.

30. The organ of the Holy See, which has been published in Rome. It will now be transferred to Vatican territory, and will become the official organ of the City of the Vatican under the name of *Osservatore in Vaticano*.

31. Corradini, Enrico, *La Riforma Politica in Europa*, Milan, Mondadori, 1928, p. 89. "Individuals and classes, or individuals, syndicates and corporations, and the State, are a biological unity." Corradini is the leading Nationalist writer on political theory.

32. Gentile, Giovanni, "Il Problemo Religioso in Italia," *Fascismo e Cultura*, Milan, Treves, 1928, p. 173 ff. Gentile is the official philosopher of Fascism, and was Minister of Public Instruction, 1922-1924. Cf. Mussolini's speeches, especially "I Compiti della Nuova Italia," Rome, Apr. 7, 1926, when he said: "We control the political forces, we control the moral forces, we control the economic forces; we are thus fully the corporative Fascist State." (*Discorsi del 1926*, Milan, Alpes, 1927, p. 120.)

33. Gentile, *op. cit.*, p. 175.

34. Gentile, Giovanni, "Contro l'Agnosticismo della Scuola," *Fascismo e Cultura*, p. 37; Giuliano, Balbino, *La Politica Scolastica del Governo Nazionale*, Milan, Alpes, 1924, p. 97 *et. seq.*

35. Mussolini, Address made in Perugia, Oct. 5, 1926, *Discorsi del 1926*, Milan, Alpes, 1927, p. 310.

36. In this connection, it must be noted that the Fascist Government has actively opposed Masonry.

37. Lupi, Dario. *La Riforma Gentile e la Nuova Anima della Scuola*, Milan, Mondadori, 1924, p. 185-186.

supervisor. In judging the fitness of teachers or other persons to impart religious instruction, the royal supervisor shall be guided by the opinion of the ecclesiastical authorities.

"Children whose parents wish to provide religious education personally are exempted from religious instruction in the schools."[38]

A circular of the Ministry of Public Instruction made it clear that children of non-Catholics were exempt from the study of the Catholic religion.[39] Religious instruction in schools controlled by the Church was not affected by the reform. The essential feature of this reform was that the State had devised a means of utilizing the kernel of the Catholic religion—discipline and traditionalism—for its own purposes, while avoiding the influence of the Church as an organization.[40]

## NEGOTIATIONS PRECEDING THE ACCORD

Successful as the Fascist Government was in carrying out its school reform, it soon found, like its predecessors, that unilateral regularization of the relations between Church and State offered a variety of problems. In 1926, when it attempted to reform ecclesiastical legislation, it encountered determined opposition on the part of the Pope, who declared that no accord could be reached on this subject as long as the condition of the Holy See in Italy remained unchanged. The suppression in 1928 of all institutions having as their object the physical, moral or spiritual education of youth, with the exception of those controlled by the national *Balilla*—a Fascist organization—elicited vigorous protests from the Pope.

The adjustment of the relations between Church and State appeared as desirable for both parties as reconciliation between the Holy See and Italy. The Fascist State could not view without alarm the "conflict of conscience" with which Italian Catholics were faced as a result of the "Roman question"; nor could it permit so powerful an organization as the Catholic Church to remain indefinitely outside its governmental framework. From the point of view of the Church active participation in the life of post-war Italy appeared both necessary and desirable. The conciliatory attitude of the Fascist Government facilitated the preliminary steps. The "spiritual climate" of Fascism was regarded as favorable to a settlement.

The first exchanges of views regarding the possible bases of an accord took place on August 6, 1926, between Professor Domenico Barone, councillor of State, and Professor Francesco Pacelli, councillor of the Holy See; these were entirely unofficial in character. At that time the Holy See made it a condition that the initiative should come from the Italian Government and that the negotiations should be carried on in absolute secrecy.

On October 4, 1926 Mussolini authorized Barone to continue the conversations in which he was engaged, with the proviso that they were to be strictly confidential, and "neither official nor officious." Similar authorization was received by Pacelli from Cardinal Gasparri in letters dated October 6 and 24. The Holy See set forth its demands: it was to be guaranteed "full liberty and independence, not merely real and effective, but also visible and manifest, with territory in full and exclusive possession, both as to dominion and as to jurisdiction, as befits a true sovereignty, and inviolable in every eventuality." The new political adjustment was to be recognized by other States, at least by European States with which both the Holy See and Italy have diplomatic relations. The political treaty was to be accompanied by a concordat which was to regulate ecclesiastical legislation in Italy. The Italian Government demanded the recognition by the Holy See of Rome as the capital of the Kingdom of Italy under the dynasty of the House of Savoy.

A draft of the treaty was completed on November 24, 1926, when the negotiators turned their attention to the drafting of the concordat. At this stage of the negotiations they received the assistance of Mgr. Francesco Borgongini Duca, Secretary of the Sacred Congregation of Extraordinary Ecclesiastical Affairs and of the section on

38. Royal decree, Oct. 1, 1923, *Ordinamento dei Gradi Scolastici e dei Programmi Didattici dell' Instruzione Elementare. Gazetta Ufficiale del Regno d'Italia*, Rome, Oct. 24, 1923, Part I, Anno LXIV, No. 250, p. 6505. Translated in Marraro, H. R., *Nationalism in Italian Education*, New York, Italian Digest and News Service, 1927, Appendix C, p. 108.

39. Gentile, Giovanni, *Il Fascismo al Governo della Scuola*, Palermo, Sandron, 1924. The curriculum was to include the following subjects: prayers and religious hymns; religious talks; comments on prayers; episodes from the Old and New Testament; lessons on the *Pater*; the life of Jesus; the Commandments; the history of Catholic religious principles, of religious life and worship; lives of great Italian saints; religious poems. Marraro, *op. cit.*, p. 26.

40. Giuliano, *op. cit.*, p. 98.

Extraordinary Affairs of the Secretariate of State. The text of the concordat was completed in February, but was communicated to the parties only in April of that year.

Texts of the treaty, the concordat and the financial convention were ready on August 20, 1928. On September 3 Cardinal Gasparri authorized Professor Pacelli to enter into official negotiations with the Italian Government. It was not until November 8, however, that the territorial status of the Holy See was settled, with the surrender by the Pope of his claims to the Villa Doria Pamphili and territory between the latter and the Vatican. On November 9 Mussolini authorized Barone to proceed officially with the negotiations. On November 22 the King of Italy gave Mussolini full powers, with Barone as his representative, to conduct official negotiations for the solution of the "Roman question," and to sign both treaty and concordat. Similar powers were conferred on Cardinal Gasparri by the Pope on November 25, Professor Pacelli being named the representative.

### SIGNING OF THE ACCORD

The negotiations were interrupted by the illness of Professor Barone, and his death on January 4, 1929. Mussolini himself took charge of the negotiations on January 8. Alfredo Rocco, the Minister of Justice, and an official from the General Direction of Cults were present at the last sessions. On February 7, 1929 the diplomatic representatives accredited to the Holy See were notified by Cardinal Gasparri of the imminence of the accord. Italian Ambassadors and Ministers, Apostolic Nuncios and Internuncios, were likewise informed, and were instructed to notify the governments to which they were accredited. On February 11 the three documents which constitute the Lateran accord were signed by Cardinal Gasparri on behalf of the Holy See and by Mussolini on behalf of the Italian Government.[41] The secrecy of the negotiations was well maintained—a fact ascribed by Mussolini "to the magnificent discipline which we have imposed on the Italian people." The Italian press contained no mention of the accord until February 12, although the correspondents of foreign newspapers in Italy had not been prevented from discussing the matter in their dispatches prior to February 11.

On April 30 Mussolini presented the Lateran accord to the new Chamber of Deputies. The Minister of Justice subsequently introduced three projects of law, intended to carry the accord into effect: (1) a law regarding the application of the concordat in the sections relating to marriage; (2) a law regarding ecclesiastical organizations and the civil administration of ecclesiastical property; (3) a law regarding the exercise of cults admitted by the State and regarding marriages celebrated before ministers of these cults. On May 12 Mussolini addressed the Chamber of Deputies for three and a half hours on the subject of reconciliation. The accord and the accompanying legislation were passed by the Chamber of Deputies on May 13, and by the Senate on May 25; two dissenting votes were cast in the Chamber and six in the Senate; the views of the Senate minority were expressed by the critic and philosopher, Benedetto Croce. On May 27 the accord was signed by the King of Italy, and on May 30 by the Pope; the exchange of ratifications took place at the Vatican on June 7.

## THE LATERAN ACCORD

### THE TREATY OF RECONCILIATION

The purpose of the accord is clearly stated in the preamble to the treaty of reconciliation.

> ". . . The Holy See and Italy have both recognized the desirability of eliminating every cause of disagreement existing between them by coming to a definite understanding of their mutual relations which shall be in accordance with justice and compatible with the dignity of the two High Contracting Parties and which, by assuring permanently to the Holy See a status of fact and of right that shall guarantee to it absolute independence in the exercise of its mission in the world, allows the said Holy See to acknowl-

41. This account is based on the address made by Mussolini before the Chamber of Deputies, May 13, 1929, *Corriere della Sera*, May 14, 1929 and on the statement made by Prof. Pacelli to *Popolo d'Italia*, Feb. 12, 1929. The treaty went through twenty drafts. Prof. Pacelli had one hundred and fifty audiences with the Pope.

edge as settled definitely and irrevocably the 'Roman Question' which arose in 1870 with the annexation of Rome to the Kingdom of Italy under the dynasty of the House of Savoy."[42]

In order to assure "absolute and visible independence to the Holy See" and to guarantee to it "undisputed sovereignty in the field of international relations," the contracting parties deem it necessary to establish the City of the Vatican. By Article 3 of the treaty a territorial unit of forty-four hectares,[43] the City of the Vatican, is created, over which the Holy See is to have "full possession and exclusive and absolute power and sovereign jurisdiction." In addition, the Holy See is given possession of the pontifical palace of Castel Gandolfo and of specified basilicas and monasteries. Italy undertakes to furnish the City of the Vatican, at its own expense, with an adequate water supply, with railroad communications, with telephone, telegraph, radio telephone, radio and postal services. By Article 7 all aircraft is prohibited from flying over Vatican territory.

The City of the Vatican is endowed with the rights and obligations of a State. All persons having a fixed residence on its territory will be subject to the sovereignty of the Holy See, and will be considered citizens of the City of the Vatican;[44] this citizenship, however, will be lost with the abandonment of permanent domicile. The Holy See is recognized as having the right of active and passive legation according to the rules of international law. Provision is made for the extradition of criminals by the contracting parties.[45] It is expected that public order will be maintained by the Swiss Guard and the pontifical police, both of which will be increased in number.[46]

42. The authoritative translation of the texts of the accord published by the National Catholic Welfare Council, Washington, D. C., under the title *The Treaty and Concordat*, has been used in the preparation of this report. *The Treaty and Concordat* also contains the original text of the three documents. The treaty, the concordat, the financial convention and the accompanying legislation were published in *Gazetta Ufficiale*, May 29, 1929.

43. 108.7 acres.

44. It is computed that the City of the Vatican has four hundred citizens, including the cardinals residing in Rome. *Corriere della Sera*, May 19, 1929.

45. This provision is particularly interesting in view of the fact that Italian newspapers have been recently advocating international revision of the present rules regarding the extradition of persons accused of political crimes, on the ground that the sentences meted out by foreign courts to anti-Fascists are altogether too lax. *New York Times*, May 12, 1929.

46. *Corriere della Sera*, Feb. 20, 1929.

The "fundamental law," or Constitution, of the State of the City of the Vatican, which came into force on June 10, provides for the exercise by the Pope of the legislative, executive and judicial powers. These powers may be delegated by the Pope to such officials as the Governor of the City of the Vatican and the cardinal Secretary of State; all officials, however, are responsible to the Pope alone. No provision is made for a legislative body. The Pope is empowered to examine and approve the budget, which is to be submitted by the Governor. The legal system of the new State is to be based on canon law, and pontifical constitutions and rules issued by the Pope or persons subject to his authority. Civil cases shall be tried by a special court, which is to be appointed in the near future; appeal may be made to the Supreme Tribunal of the Segnatura and the Sacred Roman Rota. Penal cases shall be tried by a court of one or more judges appointed by the Governor of the City of the Vatican.

The Law of Guarantees, which had been the chief obstacle to reconciliation, is abrogated. "Italy recognizes the sovereignty of the Holy See in the field of international relations as an attribute that pertains to the very nature of the Holy See, in conformity with its tradition and with the demands of its mission in the world." The Holy See, for its part, recognizes the Kingdom of Italy under the dynasty of the House of Savoy, with Rome as the capital of the Italian State.

The Holy See declares that "it wishes to remain and will remain extraneous to all temporal disputes between nations and to international Congresses convoked for the settlement of such disputes unless the contending parties make concordant appeal to its mission of peace; nevertheless it reserves the right in every case to exercise its moral and spiritual power."

### THE RESULTS OF THE TREATY

The first, and perhaps most important, result of the treaty of reconciliation is the elimination of the "Roman question." The act of reconciliation may be regarded as but the consummation of a gradual *rapproche-*

*ment* between Church and State;[47] it has, nevertheless, the distinct advantage of converting a situation *de facto* which had been definitive, but always dangerous and painful, into a *de jure* one.[48]

It would probably have been impolitic for the Pope to have made large territorial claims, unless he could have been certain of the restoration of the Papal States in their entirety—a solution as unacceptable to the Fascist Government as it had been to its predecessors. A degree of territorial sovereignty, however, was desired by the Holy See, in order to avoid interference by or subjection to any one secular State.[49] Under these circumstances, Pius XI, according to his own statement, approached the territorial settlement from the point of view of Saint Francis—"only so much body as will suffice to keep the soul together." Some territory was necessary, "because some measure of territorial sovereignty is a condition universally recognized as indispensable for true juridical sovereignty." The Pope now has "only so much material territory as is indispensable for the exercise of a spiritual power confided to men for the benefit of men." In his anxiety to facilitate the reconciliation, the Pope dealt with Italy as with a son, and wished to avoid all appearances of encroaching on Italy's territorial integrity. Moreover, in his opinion, the City of the Vatican, small when measured in inches, is precious when viewed as the repository of works of art and treasures of science.[50]

To those who would view the establishment of the City of the Vatican as a restoration of the temporal power of the Holy See, Mussolini made the following answer on May 13:

> "Thus, gentlemen, we have not resurrected the temporal power of the Popes: we have buried it. We have left it so much territory as will suffice to bury it once and for all. No territory passes to the City of the Vatican which it did not already possess and which no force in the world and no revolution would have wrested from it. The tricolor flag is not lowered, because it was never hoisted there!"

He emphasized the fact that the City of the Vatican owes its creation to the will of the Fascist Government:

> "No one, no Italian who does not wish it, will become a subject of this State which we have created by spontaneous act of our will as Fascists and as Catholics."

He agreed with the Pope as to the basic significance of the City of the Vatican:

> "The City of the Vatican is great by what it is, by what it represents, not because of a square kilometer more or less."

If the Pope could have been criticized by Catholics for accepting too little territory, he might likewise have been criticized for accepting too much money. This criticism he forestalled by saying on February 11 that the financial settlement was a matter of domestic economy. The Church relies on the faithful for its financial support. But "divine Providence does not dispense us from the virtue of prudence nor from the human providence which is in our power." The sum agreed upon, according to the *Osservatore Romano*, represents a strict minimum.[51]

Guarantees of the new City of the Vatican, according to the Pope, are to be sought in the conscience and sense of justice of the Italian people, but above all in the divine assistance promised to the Church and the Vicar of Christ.[52] Formal rejection by the Pope of international guarantees is eminently satisfactory to Italy. The solution of the "Roman question," said Mussolini on May 13, is Italian, and no other power has participated in it. Italy, he added, constitutes herself trustee of the neutrality and inviolability of the City of the Vatican—a position which is expected to add to her prestige in Catholic countries.[53]

The treaty makes no provisions regarding the relations of the Holy See with States other than Italy except such as were already

47. Cf. Coppola, Francesco, "La Croce e l'Aquila," *Politica*, Feb.-Apr., 1929, p. 35.

48. Mussolini. Address before the First Quinquennial Assembly of the Régime, Mar. 10, 1929. *Corriere della Sera*, Mar. 12, 1929.

49. Cf. Hayes, Carlton J. H., *op. cit.*

50. Address made by the Pope to the Lenten Preachers of Rome, Feb. 11, 1929, *Corriere della Sera*, Feb. 12, 1929. Cf. also "L'Ora di Dio," *Civiltà Cattolica*, Feb. 16, 1929, p. 293.

51. Cf. also *Civiltà Cattolica*, Mar. 21, 1929, p. 393, where the financial needs of the City of the Vatican are emphasized.

52. Cf. also *Osservatore Romano*, Feb. 11, 1929.

53. On May 10, 1929, M. Fani said in the Chamber of Deputies: "By guaranteeing the pastoral mission of the Church Italy has signified her Catholic preeminence over all other nations, thus adding new prestige and new force to her international life." *Corriere della Sera*, May 11, 1929.

contained in the Law of Guarantees. Secular States may find it advisable to recognize the new State of the City of the Vatican; such an act, however, would be purely a matter of form, unless recognition should by some State be made the basis for diplomatic representation at the Vatican.

Fears that the Holy See, as a result of its new territorial status, would claim a seat in the League of Nations, have been dispelled by the treaty itself. It is not improbable, however, that the Holy See, while abstaining from the political activities of the League, may participate in its humanitarian work, such as the regulation of traffic in women and children and the abolition of slavery;[54] in such matters the Holy See may be expected to act as an international organization devoted to spiritual ends rather than as a secular State.

### THE FUTURE OF THE CHURCH: ITALIAN OR INTERNATIONAL?

Of interest is the question whether, now that the relations of the Holy See with Italy have been adjusted, an attempt will be made to de-Italianize the administration of the Church, or whether, on the contrary, Italy will now acquire greater influence in the counsels of the Church, and utilize the agencies of this international organization for its own national ends. Mussolini took occasion on May 13 to emphasize the nationality of the present Pope:

> "We have had the fortune of having before us a Pontiff truly Italian . . . . He is the head of all the Catholics; his position is supernational. But he was born in Italy, in the land of Lombardy. . . "[55]

Fascist spokesmen, however, expressly deny that the treaty will involve the "nationalization" of the Church. They claim that the universality of the Church increases in direct ratio to the ties it forms with national States.

> "It is clear that the universal policy of the Church will be perfect on the day it will be united with all other States. . . . The reconciliation [with Italy] is a new step of the Church toward the perfection of her universality. . . ."[56]

Preferential treatment of Italy in the government of the Church may be expected to encounter opposition from two quarters: from officials of the Church itself, who may consider it impolitic to become dependent on one State more than another, thereby incurring the suspicion of less favored States, and from Catholics outside Italy, who could but view with alarm a tendency towards the Italianization of the Church. The Holy See may find it advisable to dispel suspicion and disarm criticism, especially on the part of France, by avoiding acts which might be viewed as implying favoritism. On the other hand, Catholic States may find it to their interest to counteract a possible increase in Italian influence by strengthening their ties with the Holy See.

An indication of future policy in this matter may be seen in the discussion which has recently taken place with regard to the appointments of Catholic missionaries. Immediately after the conclusion of the accord the Italian press carried surveys of the position of Italian missions as compared with those of France. The French press, alarmed by these surveys, claimed in several instances that the elimination of French missions had been the price exacted by Italy in return for reconciliation. This rumor was officially denied by the *Osservatore Romano*.[57] Nevertheless, the French Chamber of Deputies appears to have heeded the comments of the press[58] and M. Briand's appeal of March 20, when he said: "The whole world shall know that the French Republic shall not permit the decline of those centres of light which are our French missions abroad." On March 27 the Chamber passed bills authorizing nine religious missions to establish headquarters and train their recruits in France. The ques-

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54. Cf. *Giornale d'Italia*, Feb. 14, 1929; *Le Temps*, Mar. 26, 1929.

55. Cf. Coppola, cited, who states that the Popes are Italians "because no other nation possesses in such measure as the Italian nation the temperament and universal *forma mentis* necessary for the Papacy."

56. M. Cantalupo in the Chamber of Deputies, May 10, 1929, *Corriere della Sera*, May 11, 1929. Similar remarks were made in the Senate by Senator Bevione, May 23, 1929, *Corriere della Sera*, May 24, 1929.

57. *Le Temps*, Feb. 20, 1929; cf. *Corriere della Sera*, May 2, 1929, "Italiani Missionari."

58. Cf. Gentizon, *Le Temps*, Feb. 24, 1929: "Already the Italian congregations have greeted the Lateran treaties with enthusiasm. Already Fascist political circles make no secret of their expectation that articles 33 to 43 will be rejected at the Palais-Bourbon. In fact, the best collaborators of the Duce are the opponents of support to our missions. And this shows to what an extent our anticlericals play into the hands not only of Fascism, but of a greater Italy." (Translation ours.)

tion of assistance to French missions has always been regarded by the French Government as one of French propaganda.

> "Perhaps one has the right to think that the Lateran treaties, by which M. Mussolini grants such large facilities to the congregations of his country, to the profit of the Italian missions, make it incumbent on us to prevent the weakening of French missions."[59]

## THE CONCORDAT

The treaty of reconciliation, however, does not stand alone. It must be read in conjunction with the concordat, the purpose of which is to settle "the status of religion and of the Church in Italy." The scope of the concordat may be properly determined only after comparison of its provisions with those contained in other recent concordats. These provisions may be examined under the following heads: (1) the position of the Catholic religion in the State; (2) the extent of ecclesiastical jurisdiction; (3) the nomination of bishops; (4) the rights and privileges of the clergy; (5) the creation of ecclesiastical bodies or religious associations; (6) religious marriages; (7) religious instruction; (8) the attitude of the government toward Catholic organizations; (9) the territorial delimitation of dioceses.

### *Position of Catholic Religion in State*

By Article 1 of the treaty of reconciliation Italy recognizes and reaffirms the principle set forth in Article 1 of the Italian Constitution, to the effect that the Roman Catholic Apostolic religion is the sole religion of the State. This statement is supplemented by Article 1 of the law regarding the exercise of cults, which declares that cults other than the Roman Catholic religion are "admitted"[60] in the Kingdom of Italy, provided they neither profess principles nor follow rites contrary to public order and morality. In addition, Article 5 of this law provides for freedom in the discussion of religious matters.[61]

The concordat itself (Article 1) assures to the Catholic Church free exercise of spiritual powers and free and public exercise of worship. In this it does not differ from the Bavarian,[62] Latvian,[63] Lithuanian[64] and Polish[65] concordats, all of which assure the free exercise of the Catholic religion. The position of the Catholic religion in Italy differs from that which it occupies in States such as France, where the separation of Church and State is effected by law. In France liberty of conscience is prescribed by law, and no provisions are made regarding the exercise of any one religion.

### *Ecclesiastical Jurisdiction*

By Article 1 of the Italian concordat the Church is assured jurisdiction in ecclesiastical matters in conformity with the provisions of the concordat. Where it is necessary, the Italian Government accords to ecclesiastics the defense of its authority for acts of their spiritual ministry.[66]

Canon law may still affect the interests of the State in the following matters: the nomination of members of the clergy; the formation of ecclesiastical bodies or religious associations; the administration of ecclesiastical property; and the performance of religious marriages. The relations of Church and State in these matters are determined in each case by the concordat.

Article 29 of the Italian concordat provides for the revision of Italian legislation affecting ecclesiastical matters, in order to make it conformable to the spirit of both treaty and concordat. This revision has already been accomplished by a mixed com-

59. Félix de Vogüé, "Les Congrégations Missionnaires devant le Parlement," *L'Europe Nouvelle*, Mar. 30, 1929, p. 419.

60. Under the Constitution of 1848 such cults were only "tolerated."

61. According to the last census taken in Italy (1911) the distribution of adherents of various religions was as follows: Catholic, 32,983,664; Protestant, 123,253; Jewish, 24,324; Oriental rites, 1,375; other cults, 822. There were 574,523 who declared that they followed no religion and 653,404 made no statement in the matter. *Camera degli Deputati, Relazione della Commissione Speciale nominata dal Presidente sul Desegno di Legge; Disposizioni sull' Esercizio dei Culti Ammessi nello Stato*, etc. Legislatura XXVIII, Sessione 1929, Disegni di Legge e Relazioni, N. 137-A, p. 2.

62. *Acta Apostolicae Sedis*, Vol. XVII (1925), p. 41, Art. 1, Sec. 1.

63. *Ibid.*, Vol. XIV (1922), p. 577, Art. 1.

64. *Ibid.*, Vol. XIX (1927), p. 425, Art. 1.

65. *Ibid.*, Vol. XVII (1925), p. 273, Art. 1. The Polish Constitution (Art. 114) makes the following provision: "The Roman Catholic religion, being the religion of the preponderant majority of the nation, occupies the chief position among enfranchised religions." The Latvian Constitution makes no provision with regard to religion. The Lithuanian Constitution provides for freedom of religious belief and conscience (Section 13).

66. Similar guarantees are contained in the Polish concordat (Art. 1 and Art. 4) and the Lithuanian concordat (Art. 1 and Art. 4); in addition, both assure to the Church free administration of its affairs according to "divine laws and canon law." The Bavarian concordat (Art. 1, Sec. 2) recognizes the right of the Church to promulgate, within the limits of its competence, laws and decrees which are binding on its members; the State pledges itself not to interfere with the exercise of this right.

mission on which both the Holy See and Italy were represented; the results are embodied in two laws, one providing for the application of the sections of the concordat relating to marriage, the other providing for the application of sections relating to ecclesiastical organizations and the civil administration of Church property.

*Nomination of Bishops*

According to Article 19 of the Italian concordat, the choice of archbishops and bishops belongs to the Holy See. Prior to nomination, however, the Holy See is to communicate the name of the person chosen to the Italian Government, in order to ascertain that the government has no political objections to the candidate.[67] Bishops must speak Italian (Article 22). All bishops, before installation in their respective dioceses, must take the following oath according to the Italian concordat:

> "Before God and on the Holy Gospels I swear and promise to respect and cause my clergy to respect the King and Government as they are established under the constitutional laws of the State. I furthermore swear and promise not to participate in any agreement or attend to counsel which would be injurious to the Italian State, or to the public peace, and not to permit my clergy any such participation. Being mindful only of the welfare and interest of the Italian State, I will endeavor to avoid anything which might menace them."[68]

This oath is modeled on the one required by the Polish and Lithuanian concordats and, according to Mussolini, gives Italy most-favored-nation treatment. The oath required by the Latvian concordat states only that the bishop pledges himself to respect and cause his clergy to respect the Constitution of Latvia, and to undertake nothing which might endanger public order. In the Bavarian concordat no provision at all is made regarding oaths.

67. Similar provisions are contained in the Bavarian, Latvian, Lithuanian and Polish concordats, and in the Czechoslovakian *modus vivendi* (*Acta Apostolicae Sedis*, Mar. 1, 1928). The last named, in addition, defines "objections of a political nature" as all objections the Government may raise with regard to the security of the State, such as that the candidate has been guilty of irredentist or separatist activity, or of activity directed against the constitution or public order of the State. The provisions of recent concordats are more favorable to the Church in this respect than, for instance, the French concordat of 1801, under which the French Government nominated the bishops, subsequently referring their names to the Holy See.

68. Article 15 of the Law of Guarantees provided that the bishops were not required to swear allegiance to the King of Italy.

*Rights and Privileges of the Clergy*

By Articles 3 and 4 of the Italian concordat members of the clergy and of religious orders are exempt from jury duty and from military service, except in case of general mobilization.[69] Stipends and other emoluments enjoyed by ecclesiastics on account of their office are exempt from charges and liens in the same way as the stipends and salaries of State employees.[70]

Article 8 of the Italian concordat provides that when a member of the clergy or of a religious order is brought before a criminal tribunal, the State prosecutor must inform the bishop of the diocese in which he exercises jurisdiction, and must transmit to him the preliminary decision and, if issued, the final sentence. Where possible, in case of sentence, punishment is to be undergone by members of the clergy in places separate from those designated for laymen, unless the bishop has reduced the prisoner to a lay state.[71]

*Creation of Ecclesiastical Bodies*

By Article 31 of the Italian concordat new ecclesiastical bodies or religious associations are to be created by ecclesiastical authorities in accordance with the rules of canon law; recognition of their juridical status, so far as civil effects are concerned, is to be made by the civil authorities.

Detailed technical provisions for the application of this article are contained in the accompanying law to which reference has already been made.[72]

69. The Polish concordat provides for exemption of the clergy from military service except in case of *levée en masse*, the Lithuanian concordat makes no exception even in such cases, while the exemption contained in the Latvian concordat is unqualified. The Latvian, Lithuanian and Polish concordats exempt members of the clergy from civil functions incompatible with their vocation.

70. According to the Polish and Lithuanian concordats, ecclesiastics, their property and the property of juridical ecclesiastical and religious persons are taxable on an equality with that of juridical lay persons; ecclesiastics, however, are exempt from judicial seizure of a part of their income.

71. Identical provisions are found in the Latvian, Lithuanian and Polish concordats, which in addition provide that the archbishop or his delegate may be present at the trial.

72. The Lithuanian concordat (Art. 10) and the Polish concordat (Art. 10) provide that the creation and modification of ecclesiastical benefices, of congregations and religious orders, also of their houses and establishments, will depend on ecclesiastical authority; the government is to be consulted only when these measures call for expenditures by the State Treasury. According to the Bavarian concordat (Art. 2), religious orders and congregations may be freely founded in conformity with canon law. Juridical personality and the rights of public corporations are acquired by them in accordance with rules in force for all citizens and associations. They are not subject to any special regulation or inspection by the State.

*Religious Marriages*

Article 34 of the Italian concordat provides that "the Italian State, wishing to reinvest the institution of marriage, which is the basis of the family, with the dignity conformable to the Catholic traditions of its people, recognizes the sacrament of matrimony performed according to canon law as fully effective in civil law." This article, which has aroused considerable discussion, makes religious marriage not obligatory, but simply optional. The law which provides for the application of sections of the concordat relating to marriage determines the technical details of the registration by civil officials of marriages performed by the Catholic clergy. Marriages performed by ministers of other cults approved by the government will likewise be effective in civil law.[73] In other words, the situation created in Italy does not differ from that in the United States, where both or either the religious and civil ceremony are legally effective.

The significance of Article 34 from the point of view of the Italian Government was emphasized by Mussolini, when he said on May 13 that marriages would thus be encouraged, with a resulting increase in population—an aim particularly sought by Fascism.

The only recent concordat which contains a similar provision regarding religious marriages is the Lithuanian concordat.[74] In Lithuania, as in Italy, civil effect is accorded to marriages performed both by the Catholic clergy and by ministers of cults recognized by Lithuanian law.

*Religious Instruction*

By Article 36 of the concordat, Italy reaffirms the principle underlying the Gentile reform, and declares that it "considers the teaching of the Christian doctrine according to the forms received from Catholic tradition as the foundation and crown of public education." It therefore agrees that the religious instruction now given in the elementary schools should likewise be imparted in the middle schools, "according to a program to be agreed upon between the Holy See and the State." Such instruction is to be in the hands of masters, professors, priests and members of religious orders approved by ecclesiastical authorities, and in subsidiary form by lay teachers and professors furnished with the necessary certificates by the bishop of the diocese. Parents professing cults other than the Catholic may, however, request that their children be excused from attending courses of religious instruction in the public schools.[75] The provisions of the concordat thus apply only to children of Catholic parents.[76] Religious instruction in schools founded and maintained by the Church is not affected by the concordat. Mussolini stated on May 13 that he categorically refused the request of the Holy See for the introduction of religious instruction in the universities.

The practical application of Article 36 can alone reveal its full significance. Mussolini has already claimed that the State cannot and will not surrender the education of "the young generations" to the Church.

> "In this sphere we are intractable. Education must be ours. These children must be educated in our religious faith, but we must integrate this education, must give to these young people the sense of virility, of power, of conquest; above all we must inspire them with our faith, with our hope."[77]

The Pope answered this statement on May 14 when, addressing the alumni of the College of Mondragone, he said that the Christian education of the young could come only from the Church, "mother and teacher of all Christian life and holiness." The State, he asserted, cannot and must not be indifferent to the education of its citizens; it must, however, supply only such assistance as the individual and the family cannot themselves provide. The State must supplement the action of the family, in order to conform to the desires of the father and the mother—in order, above all, to respect the divine right of the Church. The State is called upon to complete the work of the family and

73. Law regarding the exercise of cults admitted by the State, Art. 7.

74. Art. 15. Art. 16 of the Lithuanian concordat provides that registers of births, baptisms, marriages and deaths may be kept by the clergy and have the same status as civil registers.

75. Law regarding the exercise of cults admitted by the State, Art. 6.

76. Art. 37 of the concordat provides that the directors of the *Balilla* and *Avanguardisti* are to arrange their schedules so as to permit fulfilment by the boys of their religious duties on Sundays and fixed religious holidays.

77. Address of May 13, 1929. (Translation ours.)

of the Church in the matter of education only because it has exceptional means at its disposal for the needs of all, and it is just that it should utilize these means to the advantage of those from whom it derives them.

> "We can never agree, however, to anything that compresses, decreases or denies the rights which nature and God gave the family and the Church in the field of education. On this point we shall not say that we are intractable, for intractability is not a virtue, but we are 'intransigeant,' just as we could not help being intransigeant if asked how much two and two make. . . "[78]

The Pope took this occasion to criticize the professed aims of Fascist education:

> "We cannot say that to perform its duty in the field of education it is necessary, opportune or even advisable for the State to raise conquerors and to train youth for conquest. What one particular State does might be done by the whole world. If all States raised their youths to be conquerors, what would happen? Would the State in this way be contributing to general pacification? Unless what was meant was that youth should be trained for conquest of truth and virtue, in which case we are in perfect agreement."

In reply Mussolini, when addressing the Senate on May 25, distinguished between education and instruction. Fascism, he said, does not claim a monopoly of instruction. It leaves the Church free to give religious instruction, but it claims a monopoly of the education or formation of the character of the new generation.[79] "On this point," he added, "we are not intractable, since that word is apparently forbidden, but we also are intransigeant." On May 13 he had already stated that religious instruction in the schools would be given, not in the form of catechism, but in the form of historical and moral studies, "because it must be attractive and interesting, otherwise the opposite effect will be achieved." On May 25 he deprecated the Pope's remarks with regard to "training for conquest"; such training, he held, was made necessary by the present state of the world.[80]

### *Position of Catholic Organizations*

By Article 43 of the Italian concordat, Italy recognizes the *Azione Cattolica Italiana*, a Catholic organization "under the immediate direction of the hierarchy of the Church for diffusion and propaganda of Catholic principles," whose activities, according to the Holy See, are "outside all political parties." The Holy See, for its part, renews to all ecclesiastics and members of religious orders in Italy "the prohibition against joining or taking part in any political party." The emergence of a Catholic party, such as the suppressed Popular party, is thus precluded. "We shall not permit," said Mussolini on May 13, "the resurrection of parties or organizations which we have forever destroyed."[81]

### *Territorial Delimitation of Dioceses*

By Article 16 of the Italian concordat it is agreed that no part of the territory subject to the sovereignty of the Kingdom of Italy will be under the jurisdiction of a bishop whose territory is subject to the sovereignty of another State. This provision is intended to bring ecclesiastical boundaries into conformity with Italy's post-war political boundaries.[82]

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78. *Corriere della Sera*, May 16, 1929. (Translation ours.)

79. Cf. the speech made by Salvatore di Marzo in the Chamber of Deputies on May 28, 1928 in the course of discussion regarding the budget of the Ministry of Public Instruction. He said that Fascism had arrived at a unitary conception of the school, to which it assigns the task of giving an education directed at the full development of the spiritual values and economic forces of the nation, and of forming, not merely cultured men or professional men but, first and foremost, Italian citizens. *Corriere della Sera*, May 29, 1929.

80. According to the Lithuanian concordat (Art. 13) and the Polish concordat (Art. 13), religious instruction is obligatory in all public schools, with the exception of institutions of higher learning. The Lithuanian constitution, Art. 81, provides that "religious instruction is obligatory in all schools, except those schools which are established for the children whose parents do not belong to any religious organization. The pupils are obliged to receive instruction in accordance with the religion to which they belong." In Poland the study of religion is included in the statutory curriculum of public schools and instruction in the principles of their respective religions is obligatory for all pupils.

According to the Bavarian concordat, the Church is guaranteed supervision and direction of religious instruction in elementary and middle schools and in institutions of higher learning (Art. 8). Religious instruction is to remain a regular subject of study in the elementary schools (Art. 7), in the middle schools and in institutions of higher learning (Art. 3, Sec. 3).

81. The Latvian concordat provides that the government shall not interfere with the activities of Catholic associations, "which shall have the same rights as other associations recognized by the State" (Art. 13). The Lithuanian concordat provides that the State shall accord full liberty of organization and activity to associations whose aims are chiefly religious and which form part of the *Action Catholique* (Art. 25).

82. The Lithuanian concordat (Art. 9) and the Polish concordat (Art. 9) and the Czechoslovakian *modus vivendi* (Art. 1) contain similar provisions regarding the delimitation of dioceses. The Bavarian concordat provides that the actual constitution of ecclesiastical provinces and dioceses shall not be altered, except for slight modifications which may be necessary "in the interest of the care of souls" (Art. 12). This provision has been interpreted by French critics as an effort to prevent any modification, even provisionally, of the diocese of Speyer, part of which is incorporated in the Saar Basin.

A new diocese, the diocese of Zara (in Dalmatia) is to be created by the Holy See. Of interest in this connection is the provision made by Article 2 of the concordat, to the effect that such publications as affect the Holy See may be made in any language; those by bishops are to be made in Italian or Latin, but the ecclesiastical authorities may add translations in other languages.[83]

Two other provisions of the concordat must be emphasized. By Article 11 the State recognizes the holidays established by the Church. Article 28 states that "in order to appease the conscience of those who, under Italian law, own ecclesiastical property, the Holy See grants full recognition to the title of such property."

### RESULTS OF THE CONCORDAT

The most important result of the concordat, from the point of view of the Holy See, is that the Church has again been brought into direct and official contact with Italian life. This view was expressed by the Pope when he said that by the Lateran accord God had been restored to Italy and Italy had been restored to God.

The Fascist Government, for its part, derives this great advantage from the concordat—that the conflict of conscience which divided Catholics between loyalty to the Holy See and allegiance to the Italian State has now been brought to a close. To use Mussolini's phrase, "the citizen is a Catholic and the Catholic is a citizen." Catholicism has been made an integral part of the State. The State, however, contemplates no deviation from its present policy. "The Fascist State asserts its ethical character; it is Catholic, but it is Fascist, above all exclusively, essentially Fascist."[84]

This statement raises anew the question underlined by Fascist anticlericals: Is it possible for the Fascist State to co-exist with the Roman Catholic Church on a basis of equality? Must not the State, by its very nature, absorb the Church and utilize it for its own ends? Mussolini's answer is that no such co-existence is contemplated. He defines the position of the Church in Italy as follows: in the State the Church is not sovereign, and not even free; both in its institutions and in its members it is subject to the general laws of the State and to the special clauses of the concordat. Within the Kingdom of Italy the State is sovereign, the Catholic Church has certain privileges loyally and voluntarily recognized, and other cults are freely admitted.

Opponents of the concordat claim that it constitutes a danger for Italy. On May 24 Benedetto Croce, addressing the Senate, voiced the fear that the Lateran accord would lead to the rise in Italy "of a clerical State which extends its hand to the Holy Office and gives validity to the index of prohibited books and resubmits the education of youth to Jesuitical concepts."[85] Fascist spokesmen deny the possibility of Italy's "clericalization" as a result of the application of the concordat. The "secure spiritual equilibrium" of the Italian people guarantees it against such an eventuality. Fascism, said Cantalupo in the Chamber of Deputies, has harmonized and blended the most diverse ideals into a "homogeneous whole, into an organic political conception, into a mature consciousness of the nation, into a conception and organization, juridically defined, of the State as an operative force."[86]

The Fascist Government, as a result of the concordat, has obtained the co-operation of the Church in Italy. That this co-operation may not be purely nominal was indicated by the action of the clergy during the March "plebiscite," when priests and bishops advocated the acceptance of the Fascist list of candidates and went to the polls in large numbers. On the other hand, the Holy See has undertaken to prevent ecclesiastical participation in party politics, thus effectively silencing the one group in Italy which might conceivably have challenged the Fascist monopoly of power.

83. Priests in the South Tyrol retain the right of preaching in German, but they are instructed by the Holy See to inculcate in their flocks loyalty and devotion to their fatherland, Italy. Cf. *Le Temps*, Feb. 20, 1929.

84. Address of May 13, 1929. Cf. remarks made by M. Carapelle in the Chamber of Deputies, May 11, 1929: "Catholics are first of all men belonging to a national society; for this reason there can be no conflict between faith and patriotism." *Corriere della Sera*, May 12, 1929.

85. *New York Times*, May 25, 1929. Croce's speech was briefly summarized in *Corriere della Sera*, May 25, 1929, with the following comment: "The end of the speech, which had been continuously interrupted, was received by the assembly in glacial silence."

86. May 16, 1929. *Corriere della Sera*, May 11, 1929. Similar remarks were made by Senator Bevione in the Senate, May 23, 1929. *Corriere della Sera*, May 24, 1929.